THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 1307 OF 2014

JUDGMENT:

The appellant is the injured-claimant. He filed this appeal against the award and decree dated 12.11.2007 passed in M.V.O.P.No.896 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Court (FTC), Hyderabad, granting Rs.33,000/- against the claim of Rs.1 lakh with proportionate costs and interest @ 7.5% per annum for the injuries sustained by him in the motor accident occurred on 05.07.2005.

2. The brief facts of the case are that on 05.07.2005 at about 11.30 a.m. when the appellant was traveling in Auto trolley bearing No.AP20T 7161 along with others with centering material from Rahamathnagar to BHEL, when the auto reached Kalyan Nagar X road, the driver of the auto drove the vehicle in rash and negligent manner with high speed, hit the compound resulting the auto trolley turned turtle and the appellant sustained fractures. Immediately, he was shifted to Gandhi hospital and later to Vijaya Hospital. Hence, he filed claim petition claiming compensation of Rs.1 lakh against the owner and insurer jointly and severally.

3. The Tribunal, based on the evidence of PW1 and Ex.A.1 – certified copy of FIR which was registered against the driver of the auto trolley bearing No.AP20T 7161, Ex.A.2 – certified copy of charge sheet filed against the driver of the said

offending vehicle, held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and the appellant-claimant sustained injuries in the motor accident occurred on 05.07.2005. The Tribunal further held that the offending vehicle is covered by Ex.B.1 policy and it is in subsistence as on the date of accident. The Tribunal granted total compensation of Rs.33,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization and directed the 1st respondent – owner of the offending vehicle, insured, to pay the compensation amount to the appellant duly absolving the insurer holding that the appellant injured is a gratuitous passenger.

4. The issues that fall for consideration before this Court are – 1) Whether the appellant/claimant was a gratuitous passenger as held by the Tribunal or he was a passenger traveling with goods? and 2) Whether the insurer is liable to pay the compensation to the appellant/claimant along with the insured?

5. The Tribunal having considered the evidence of PW1 – injured-claimant coupled with documentary evidence of Ex.A.1-certified copy of FIR, Ex.A.2 – certified copy of charge sheet, Ex.B.1 – copy of policy, Ex.B.2 – driving license and Ex.B.3 – 'B' register of motor vehicle came to the conclusion that the driver of the offending vehicle is holding license to

drive LMV and not HMV and the offending vehicle is a goods carriage and the driver is not having valid driving license to drive transport auto. The Tribunal on an erroneous appreciation of fact and law came to the said conclusion stating that the offending vehicle is a goods carrier vehicle and the seating capacity is only one i.e. driver. PW1 in his cross-examination admitted that along with him, two others were also traveling in the trolley by sitting on the centering material. In the complaint lodged by PW.1 also, he categorically mentioned that himself, Mallesham and Narsimha were traveling in the auto trolley from Rahamathnagar to Kalyannagar 'X' road. As per Ex.A.2 – certified copy of charge sheet, the investigation done by Police also revealed that PW1 was traveling in the trolley by sitting over the centering material and the same is the evidence of RW1 as well. But, PW1 in his cross-examination admitted that goods i.e. centering material belonged to his mastry by name Sri Ashok. Therefore, it is clear that PW1 was the agent of Ashok, his mastry, and he (P.W.1) was traveling in the offending vehicle as the owner of the goods. Hence, it cannot be held that PW1 – injured claimant is a gratuitous passenger traveling in the goods vehicle. Therefore, this Court finds that the finding of the Tribunal that the appellant/claimant is a gratuitous passenger traveling in the offending goods vehicle is perverse. Ex.B.1 policy covers the risk of third parties who are traveling as owner of goods or his authorized representative.

6. The evidence on record reveals that the driver of the offending vehicle was holding the driving license to drive LMV and it was a non-transport LMV driving license. As the offending vehicle is five wheel auto trolley (goods vehicle), it comes under the ambit of 'LMV vehicle' and it is not a heavy goods vehicle. As per Ex.B.2, the driver was having license to drive LMV Non-transport and AR Non-transport. But there is no evidence forthcoming from the facts of the case that due to non-possessing of valid driving license by the driver of the offending vehicle, the accident occurred. However, the driver of the offending vehicle with the driving license for LMV Non-transport and AR Non-transport is permitted to drive same class and category of transport and goods vehicles without any endorsement as held by the Hon'ble Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited***[1]. Accordingly, it could not be said that the driver was not possessing valid driving license to drive the offending vehicle. Hence, the finding of the Tribunal is erroneous. Therefore, the insured as well as insurer are jointly and severally liable to pay the compensation to the appellant/claimant.

7. For ascertaining the quantum of compensation, the Tribunal relied on Ex.A.3 – certified copy of medico-legal

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[1] 2017 ACJ 2011

record of G.S.N. Hospital, Hyderabad, which shows that the appellant sustained two grievous injuries; Ex.A.4 discharge card of Gandhi hospital wherein fracture of right left upper 1/3 is shown; Ex.A.6 – X-ray report of Pavitra Nursing Home to the same effect with regard to the fracture; and Ex.A.5 medical prescription. Though the doctor was not examined, the Tribunal relying on the judgment in *Gundala Mallamma Vs. Anka Prasad*[2], wherein it was held that wound certificate is a public document and it can be taken as basis even without examining the doctor, the Tribunal granted Rs.15,000/- for one grievous injury and Rs.5,000/- towards shock, pain and suffering. But, the Tribunal having held that the claimant received two grievous injuries, erroneously granted Rs.15,000/- only towards one grievous injury. Hence, the appellant is entitled for compensation for two grievous injuries which can be Rs.10,000/- each i.e. Rs.20,000/-.

8. Further, the appellant is entitled for Rs.15,000/- towards pain and suffering instead of Rs.5,000/- granted by the Tribunal as the appellant received two grievous injuries and it would take three months time to recover. The Tribunal granted Rs.9,000/- towards loss of earnings for three months holding that the appellant was working as centering mastry and earning Rs.3,000/- per month. The reasonable recovery period was assessed at three months. The same could not be

[2] 2004 (5) ALD 400

found fault with. Though the Tribunal considered the loss of earnings for three months considering the period of recovery and treatment, the Tribunal granted a meager sum of Rs.2,000/- towards medical expenses and Rs.1,000/- towards extra-nourishment. It could be just and fair to enhance the amounts granted towards medical expenses from Rs.2,000/- to Rs.5,000/- and Rs.1,000/- granted towards extra-nourishment to Rs.5,000/-. However, the compensation granted towards transport expenses of Rs.1,000/- need not be interfered in the facts of the case. The rate of interest granted by the Tribunal @ 7.5% per annum cannot be said to be on higher side. Under Section 171 of M.V. Act, there is no hard and fast rule to grant fixed rate of interest, but the Tribunal has discretion to grant assessing the prevailing rate of bank interest.

9. Therefore, the total compensation payable to the appellant is enhanced from Rs.33,000/- to Rs.55,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by respondents jointly and severally. The respondents shall deposit the entire compensation amount to the credit of the O.P., after deducting the amounts already deposited, within a period of two months from the date of receipt of a copy of this order. On such deposit, the appellant can withdraw the same.

10. Accordingly, the appeal is allowed partly to the extent indicated above. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

06-12-2018
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